FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal reference	**:**	**CAM/26UH/LDC/2021/0053**
HMCTS code (audio, video, paper)	**:**	**V: CVP REMOTE**
Property	**:**	**Vista Tower, Southgate House, Southgate, Stevenage SG1 1AR**
Applicant	**:**	**Grey GR Limited Partnership**
Respondents	**:**	**The leaseholders**
Proceedings	**:**	**Dispensation with consultation requirements**
Tribunal members	**:**	**Judge Ruth Wayte** **Mr Alan Tomlinson MRICS**
Date of decision	**:**	**27 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was agreed that all issues could be determined in a remote hearing. Both the applicant and the represented respondents provided bundles for the hearing, any references to those documents in this decision are in square brackets with A or R denoting the relevant bundle.

Direction for service

By 11 July 2022 the Applicant shall send a copy of this decision to all Respondents.

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Decision (please see explanatory note below)

(1) The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 (the "**1985 Act**") to dispense with all the consultation requirements in relation to:

(i) the interim works to install a common fire alarm; and

(ii) the works identified in paragraph 8 of the applicant's statement of case dated 26 November 2021, namely:

a. removal and replacement of external wall systems;

b. removal and replacement of combustible cladding;

c. removal and repair or replacement of combustible balcony installations;

d. removal and repair or replacement of any external wood elements.

(2) The dispensation referred to above is conditional on:

a) by 25 July 2022, the Applicant paying to Burges Salmon LLP the sum of £16,500 plus VAT representing the fees payable to counsel and solicitors who have advised the Represented Respondents (defined in paragraph [3] below) in connection with this application;

b) by 25 July 2022, the Applicant providing an indemnity up to a maximum of £20,000 plus VAT for expert advice to the Represented Respondents in respect of the appropriateness, scope and price of the works covered by and the operation of the Design and Build contract;

c) the Applicant:

i. by 25 July 2022, providing to the Respondents the Building Safety Fund ("**BSF**") Portal Code and a copy of the application(s) made and any further correspondence (if not apparent on the portal);

ii. by the same date, providing to the Respondents a reasonable summary of all steps it has taken or is proposing to take to recover the cost of the required remedial works from any third party;

iii. to provide the Respondents with a copy of the PAS9980 inspection report and the Design & Build Contract and a reasonable period for observations on each (not less than 5 working days in respect of the Contract); and

iv. up to and including the time of completion of the works described in paragraph (1)(ii) above, using reasonable endeavours to provide updates to the Respondents in respect of the fire safety defects at the Property at reasonable junctures (to include applications to the BSF, any third-party recovery and any progress in respect of the proposed works),

but, for the avoidance of doubt, this paragraph does not oblige the Applicant to disclose any document which is covered by any form of legal professional privilege. Non-disclosure of such documents will not constitute non-compliance with this paragraph.

(3) The tribunal orders under section 20C of the 1985 Act that all the costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Represented Respondents.

(4) The tribunal also orders under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the liability (if any) of the Represented Respondents to pay any administration charge in respect of the costs incurred in connection with these proceedings is extinguished.

Explanatory note

This decision relates solely to the statutory consultation requirements, as explained below. It does not concern the issue of whether any service charge costs for the relevant works will be reasonable or payable. Any such issue might be the subject of an application by the landlord or leaseholders in future under section 27A of the 1985 Act.

Application

1. On 1 December 2021, the Applicant landlord, represented by J B Leitch Limited, applied under section 20ZA of the 1985 Act for a determination dispensing with the statutory consultation requirements in respect of two sets of qualifying works: interim works to install a common fire alarm and future works to external wall systems to include the removal and replacement of combustible cladding. By sections 20 and 20ZA of the 1985 Act, any relevant contributions of the Respondents through the service charge towards the costs of these works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation etc) (England) Regulations 2003 (the "Regulations") were: (a) complied with; or (b) dispensed with by the tribunal. In this application, the only issue for the tribunal is whether it is satisfied that

it is reasonable to dispense with the consultation requirements and if so on what terms.

Procedural history

2. On 1 December 2021 the tribunal issued directions. These required the Applicant to by 20 December 2021 send to each of the leaseholders (and any residential sublessees) copies of the application form and documents enclosed with it, and the directions, and display copies in a prominent place in the common parts of the Property. The applicant's representative confirmed that they had complied with this direction on 20 December 2021. The directions included a reply form for any Respondent leaseholder who objected to the application to return to the tribunal and the Applicant. Any such objecting leaseholder was to respond by 12 January 2022. The Applicant was permitted to produce a reply.

3. On 11 January 2022, Jonathan Lewis of flat 7 responded with his objections. His primary reason was that he wanted to know how much would be received from the Building Safety Fund before deciding whether to dispense with consultation requirements. He also felt that the decision to rectify the cladding and the waking watch was excessive or unnecessary, pointing out that the tower was built in 1958 and there had never been a serious fire at the property. He said that he did not wish to attend a hearing.

4. On 12 January 2022, Burges Salmon LLP responded with a statement of case on behalf of some 54 leaseholders ("the Represented Respondents"). Those Respondents sought orders: (a) for the limitation of the Applicant's costs in the proceedings, under section 20C of the 1985 Act; and (b) to reduce or extinguish any liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act. They indicated they were prepared to agree to dispensation but only on terms, including payment of £140,000 into the service charge fund in respect of the interim works; payment of the legal costs incurred in responding to the application; an indemnity of up to £40,000 in respect of expert advice on the main works and information from the Applicants on the progress of the Building Safety Fund application and any attempts to recover monies from third parties.

5. On 9 February 2022 the Applicant produced a Reply in their electronic bundle of 590 pages. The bundle also contained a copy of an objection made by flat 70 on 26 December 2021. That objection was solely about allegedly defective roof works and was therefore not relevant to this application.

6. In February and March 2022 the tribunal wrote to the representatives to see whether any agreement could be made in respect of the conditions to enable the application to be considered on the papers.

7. On 29 March 2022 the Represented Respondents produced a Statement of Case and Draft Order.

8. On 30 March 2022 the Applicant's solicitor requested a hearing in the light of the numerous issues that remained in dispute. That hearing, taking into account dates to avoid, was arranged for 9 June 2022 to take place by Cloud Video Platform. At the hearing the Applicant was represented by counsel Mr Simon Allison and the Represented Respondents by counsel Mr Justin Bates. Prior to the hearing the Represented Respondents had provided an updated Schedule of Costs and the Applicants provided copies of three authorities which are detailed below.

The Property and Leases

9. As stated above, the property was originally built in or about 1958 for office use when it was known as Southgate House. Between 2015 and 2016 the façades underwent substantial refurbishment to convert the property to residential use and it was renamed Vista Tower. The Applicant's Statement of Case states that the block incorporates 73 residential apartments. The topmost habitable floor is approximately 45.9m from ground level.

10. The Applicant landlord was registered as the proprietor of the freehold title on 24 July 2018.

11. The apartments are subject to long residential leases. A sample lease was annexed to the Statement of Case. The Applicant submitted that the cost of the works were payable by the leaseholders as service charges pursuant to paragraphs 1(a), (c) and (e) and paragraph 21 of the Fifth Schedule to the leases.

Background

12. On 14 June 2017 the newly refurbished Grenfell Tower in West London caught fire, leading to the death of 72 people. Combustible cladding was found to be the main cause of the fire spreading on the outside of the building and since then both landlords and Government have been engaged in the process of assessing the fire risk of similar buildings and arranging for remedial work in respect of any concerns. Funds were set up by Government to help leaseholders with the cost of the works and the Building Safety Act was passed on 28 April 2022 with further safeguards, although none of its provisions had come into force on the

date of the hearing and both parties agreed that this application would be determined without regard to the 2022 Act.

13. In January 2020, the MHCLG (as it then was) issued advice (later replaced with other guidance) for owners of multi-storey, multi-occupied residential buildings. Apparently prompted by that advice, a "stage 2" façade fire safety survey report was produced by Wintech Façade Engineering Consultancy on 27 August 2020. The "Wintech Report" raised concerns that, amongst other things, areas inspected did not have cavity barriers or fire stops solutions and insulation products to the opaque infill panels attached as part of the 2015/16 refurbishment were not materials of "limited combustibility".

14. Following that report and others identified in the Statement of Case, the Applicant instructed Tuffin Ferraby Taylor LLP ("TFT") to seek tenders for the proposed external works to remove and replace the combustible cladding using a two-stage process. Only two of the six invited contractors were willing to tender. TFT proceeded to the second stage with ADI Limited ("ADI"), who had submitted the lowest combined stage one tender. In the second stage, ADI submitted a tender figure of £10,349,029.13 excluding contingency and professional fees and VAT.

15. The Applicant intends to proceed with the works via a JCT Design and Build contract, with TFT as the lead consultant. This was thought to be the best way to meet the deadlines originally set by the Government's Building Safety Fund ("BSF") with which the Applicant has registered the property, via their agents Inspired Property Management ("Inspired"). Although some funds have been received from the BSF for consultancy costs, a further delay has now been caused by the requirement to reassess the property under the latest PAS9980 inspection standard. This may lead to a reassessment (and possible reduction) of the works required.

16. In or about December 2020, a waking watch was implemented as the fire risk was deemed substantial and the evacuation procedure changed from "stay put" to "get out". The monthly cost was said to be between £45-65,000, funded initially through a Freeholder loan. A letter from Inspired to the leaseholders dated 2 February 2021 identified that a linked fire alarm would significantly reduce risk and potentially lead to the removal of the waking watch. However, access would be needed to each flat.

17. Tenders were subsequently issued for the installation of a fire alarm and the Applicant chose Cromwell Fire Limited, on the basis that they provided both the lowest cost and shortest programme. The alarm was fitted by June 2021 and the waking watch ceased. A successful application had been made to the Government's Waking Watch Relief Fund ("WWRF") but that did not cover all the costs of the interim

works and the balance of some £27,068 would be sought from the leaseholders.

Consultation

18. The relevant consultation requirements (for procurement of qualifying works for which public notice was not required) are set out in Part 2 of Schedule 4 to the Regulations. These requirements are summarised in *Daejan Investments Limited v Benson and Ors* [2013] UKSC 14 at [12] and fall into 4 stages: a notice of intention to do the works, seeking of estimates, notices about estimates and a notification of reasons (if required). The Applicant suggested it had complied with the first stage of the requirements (the notice of intention required under paragraph 8 of Schedule 4) in relation to both sets of works, with notices of intention given on 1 October 2020 in relation to the main works and on 18 December 2020 in relation to the interim works to install the fire alarm.

19. No further consultation is intended in respect of the main works as the Applicant states the process is incompatible with a Design and Build contract. In respect of the interim works, the Applicant conceded that the period for representations in the initial notice was truncated but claimed that was the only defect. Shebang Security was nominated by some of the leaseholders and invited to quote. In the event, Cromwell Fire Limited was chosen by the Applicant who submitted that the stage 3 notice of estimates was completely compliant. That said, the contract was let on 24 May 2021, before expiry of the period for observations.

20. Dispensation was therefore sought retrospectively for the interim works and in relation to the main works, which are on hold pending the assessment under PAS9980.

Law on dispensation

21. Under section 20ZA of the 1985 Act, the tribunal has jurisdiction to dispense with all or any of the consultation requirements in relation to any qualifying works "*…if satisfied that it is reasonable…*" to dispense with the requirements. In *Daejan*, Lord Neuberger for the majority observed [at 40-41] that it would be inappropriate to interpret this as imposing any fetter on the exercise of the jurisdiction beyond what can be gathered from the 1985 Act itself and any other relevant admissible material. The circumstances in which applications for dispensation are made: "*…could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.*" He confirmed [at 54] that the tribunal: "*…has power to grant a dispensation on such terms as it thinks fit - provided, of course, that any such terms are appropriate in their nature and their effect.*"

22. By reference to sections 19 to 20ZA of the 1985 Act, Lord Neuberger said [at 43] that: "*…the obligation to consult the tenants in advance about proposed works goes to the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works.*" Given that purpose, it was indicated [at 44] that the issue on which the tribunal should focus when entertaining an application for dispensation: "*…must be the extent, if any, to which the tenants were prejudiced … by the failure … to comply …*" and [at 45]: "*…in a case where it was common ground that the extent, quality and cost of the works were in no way affected by … failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason)…*"

23. Lord Neuberger referred [at 65] to *relevant* prejudice, saying the only disadvantage of which tenants: "*…could legitimately complain is one which they would not have suffered if the Requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted.*" He noted [at 67] that, while the factual burden of identifying some relevant prejudice would be on the tenants: "*…the landlord can scarcely complain if the LVT views the tenants arguments sympathetically, for instance by resolving in their favour any doubts whether the works would have cost less (or, for instance, that some of the works would not have been carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points.*" Further guidance on terms of dispensation is at [68].

The dispute between the parties

24. The Represented Respondents were willing to consent to dispensation in relation to both sets of works, subject to arguments as to the scope of the works to the external wall systems and the conditions for dispensation in relation to both sets of works. As stated above, there was only one outright relevant objection to dispensation on the basis that the (unrepresented) leaseholder wanted to know the outcome of the application to the Building Safety Fund before deciding whether to consent or not.

25. In respect of the interim works, the Represented Respondents sought payment of £140,000 into the service charge account as a condition of retrospective dispensation. This was said to represent the wasted costs of the waking watch which would not have been incurred if the Applicant had accepted the Respondents' solution and installed the fire alarm earlier, using their nominated contractor.

26. Mr Allison for the Applicant argued that the alleged prejudice did not flow from the breach of the consultation requirements. The Represented Respondents were really arguing that there should have

been no consultation at all and that their design solution should have been accepted, rather than the Landlord relying on TFT and Cromwell. He pointed to paragraph 50 of Lord Neuberger's judgment in *Daejan* which refer to "*the importance of real prejudice to the tenants flowing from the landlord's breach of the Requirements*" and [65] as set out at paragraph 24 above as authority that there had to be a causal link between the breach and the prejudice.

27. *Daejan* was recently considered by the Upper Tribunal in *Marshall v Northumberland & Durham Property Trust Ltd* [2022] UKUT 92 (LC). At paragraph 62 the Deputy Chamber President criticised the FTT in that case for failing to properly identify the landlord's breach and whether any prejudice had been caused by the failure of consultation as "*a serious omission*". Paragraph 64 emphasises the need to establish causation. Paragraph 81 shows the approach taken by the UT, which was to allow the appeal where the landlord failed to give notice of intention to the appellant, "*…making it impossible for him to nominate a contractor or express a view on the scope of the work.*"

28. In this case, there were failures at both the initial notice (short notice) and notice of estimates stage (contract entered into early). Mr Allison argued that nothing flowed from the first breach as the leaseholders' contractor was invited to quote for the works. Given the evaluation of the estimates and, in particular, the fact that the estimate from Shebang Security was higher than the chosen contractor, nothing at all followed from the second breach. The leaseholders' argument was potentially relevant to any application under section 27A of the 1985 Act in respect of the costs of the interim works/waking watch but not to an application for dispensation. Mr Allison therefore argued that dispensation for the interim works should be unconditional.

29. Mr Bates for the Represented Respondents relied mainly on evidence from Richard Baldwin, a leaseholder and retired Chartered Quantity Surveyor. His statement detailed his response to the Stage 1 Notice of Intention in relation to the interim works, in particular his concern about the design fee of £21,550 +VAT charged by TFT which he considered excessive. On 25 May 2021 (before the last date given in the Stage 3 Notice of Estimates for observations) he emailed Inspired with his concerns about the chosen fire system, basically reiterating the point that Shebang Security had provided their price in January 2021 which, if accepted at that time, would have ceased the Waking Watch by mid- February 2021. The cost of some £95,000 plus VAT would also have been fully recoverable from the WWRF as that did not cover professional fees, only the cost of the works.

30. Mr Bates accepted that his case on the interim works was effectively that there should have been no consultation at all and therefore there was no "straight line" between the breach of the requirements by the Applicant and the prejudice alleged by the Represented Respondents.

He relied on the Court of Appeal's decision in *Aster Communities v Chapman and others* [2021] EWCA Civ 660 as authority that the question was actually "*what is the reasonable price to pay for the indulgence sought by the Landlord*" Newey LJ [47-50]?

31. In reply, Mr Allison pointed out that Mr Baldwin's email on 25 May 2021 was sent after the design fees had been incurred and therefore the date was not as relevant as it first appeared (being within the observation period allowed in the notice but after the contract had been entered into). Other correspondence was after completion of the works and therefore of even less relevance. In any event, the Applicant's choice was cheaper, even taking into account professional fees: £105,000 compared to £114,000. The more obvious point was that it could not possibly be reasonable for the tribunal to order payment of £140,000 in respect of a £105,000 contract.

32. Turning next to the scope of the main works, dispensation was sought by the Applicants in respect of the following works:

    a. Removal and replacement of external wall systems;

    b. Removal and replacement of combustible cladding;

    c. Removal and repair or replacement of combustible balcony installations;

    d. Removal and repair or replacement of any external wood elements;

    e. Any other works recommended by a Fire Engineer as necessary.

    The Represented Respondents objected to (e) on the basis that it was too wide. Mr Allison responded that it must relate to the main works and suggested that the wording be tightened to make that clear.

33. In terms of the breach of consultation requirements, Mr Allison submitted that the Notice of Intention was fully compliant, although he accepted that the works were put out to tender before the end of the observation period. As set out above, there would be no Notice of Estimates. He submitted that informal consultation would deal with any potential prejudice once the actual works could be confirmed. The Applicant had complied with the consultation requirements to the best of its ability; the requirements of the Building Safety Fund were paramount.

34. With that in mind, the Applicant opposed the conditions sought by the Represented Respondents of an indemnity of up to £40,000 for

experts' fees and the costs of the application. The experts' costs went beyond what would be expected during consultation and would be unlikely to have been paid by the leaseholders if the consultation requirements had been observed. In truth, it looked like a duplication of the landlord's work, particularly the provision for a Fire Safety Expert. A better way to deal with any prejudice due to the uncertain scope of the works would be to provide the leaseholders with a copy of the PAS9980 survey and allow a period for observations. The same process could also be offered for the Design and Build contract itself, once the scope of the works had been agreed.

35. In terms of the Represented Respondents' costs of the application, Mr Allison submitted that there had been no financial prejudice to date. The landlord had done their best in extraordinary circumstances and that must count in terms of "the price for indulgence". If the tribunal was minded to award costs, the amount sought was excessive and should be limited to £8-10,000. The condition sought in respect of the interim works was unreasonable and had led to increased costs, in particular the costs of the hearing. Looking at the Schedule of Costs, the Represented Respondents had instructed a Bristol firm and the rates sought should be limited to the Guideline Rates for that area, which were considerably lower that the rates claimed. Mr Allison took no issue with counsel's fees or work done on the documents and accepted that a large group of clients would lead to higher than average attendance costs.

36. In terms of the conditions in respect of the provision of information, the Applicant was happy to offer an update within 28 days but resisted any continuing obligation on the basis that it was open ended. There were also concerns that a "drip feed" of information in respect of third-party contributions may prejudice any claim.

37. In response, Mr Bates pointed out that the leaseholders were the ultimate paying party and the cost of the works was huge, in excess of £10m. The Applicant's choice of a Design and Build contract also meant that the leaseholders were denied any meaningful opportunity to comment on the scope of the works at the outset. All of those circumstances would inevitably affect the appropriate price for the indulgence sought.

38. Turning first to the indemnity sought for the expert, this was the remedy approved by the Court of Appeal in *Aster* to put the leaseholders in the position of a reasonably informed respondent. Given the procurement route chosen by the landlord, the Represented Respondents do not know what work is to be carried out. It was not reasonable to assume the leaseholders could continue to rely on Mr Baldwin to offer his expertise for nothing. An estimate had been provided to substantiate the sum of up to £40,000.

39. On costs, Mr Bates submitted that the authorities all supported that as being a standard price for indulgence – see for example paragraph 17 in *Marshall*. Given the sum involved, it was clearly reasonable to retain lawyers and the costs sought of some £30,000 were modest, given the number of leaseholders represented and the fact that the application had been contested at a hearing.

40. In terms of the conditions as to information, Mr Bates was content to agree the provisions in respect of the PAS9980 report and the contract but wanted full disclosure of the Building Safety Fund application, citing concerns expressed by them that the Applicant had been slow to respond to queries.

The tribunal's decision

41. The tribunal agrees that dispensation should be given in respect of both the interim and main works. The single objection based on the lack of certainty as to the final cost to the leaseholder, while understandable, does not address the reality of the situation for the parties. It was obvious that a common fire alarm would be a cheaper and better interim solution than the waking watch and it is in everyone's interest for the BSF application to be as successful as possible. That meant that the Applicant had to focus on their requirements over and above the rules for statutory consultation.

42. However, the scope of the works described by the Applicant is too wide, in particular *"(e) Any other works recommended by a Fire Engineer as necessary*". Given the new requirement for a PAS9980 report, it is likely that the scope will be much clearer in the contract. In any event, the ongoing informal consultation accepted as required by the Applicant will allow observations on the scope of the works to be taken into account. Dispensation in relation to the main works will therefore be limited in scope to items (a) to (d) as set out in paragraph 1(ii) above.

43. In addition, given the amount at stake and the extent to which the ultimate paying party is in the dark as to the scope of the works, the tribunal considers that conditions should be attached to remedy the prejudice (or risk of prejudice) due to the nature of the contract chosen by the Applicant. Conditions are also appropriate as "the price for the indulgence" sought by the Applicant, in particular in relation to costs.

44. Turning first to the interim works and the condition sought by the Represented Respondents of the payment of £140,000 into the service charge fund, the tribunal agrees with the Applicant that this is not a reasonable condition. The prejudice claimed by the Represented Respondents bears no relation to the breach of the consultation requirements – it is agreed that their case depends on no consultation process at all. This argument is more properly focused on any

challenge to a claim for the costs of the waking watch, if made. Similarly, Mr Baldwin's challenge to the design costs for the Applicant's solution may also be pursued if those costs are sought from the leaseholders in due course. The tribunal rejects Mr Bates' argument that there is no need to have a causal (or straight line) link between the breach and the prejudice. We also reject the suggestion that the true test is the price of indulgence, rather than prejudice. As mentioned in the preceding paragraph, we consider that "the price of indulgence" really goes to costs, as in the *Aster* case where the Court of Appeal was considering conditions imposed by the FTT as to paying the costs of an expert and of the application.

45. Here, the issue for the Respondents is that they do not know the scope of the works, beyond the general categories described in paragraph 1(ii) above, given the procurement method chosen by the landlord. This means that they have been unable at this stage to comment on the appropriateness of those works, the quality or cost. That leads to a risk of potential prejudice which flows directly from the landlord's choice of procurement, leading to their "inability" to follow the statutory consultation process. It also means that, even with the other conditions for provision of information, leaseholder are likely to suffer prejudice in that, without spending money on expert advice, they are unlikely to be able to assess or make observations on the scope, quality and/or cost of work. Clearly, they are fortunate that one of them is an experienced quantity surveyor, now retired. However, the tribunal agrees that it is not reasonable to expect him to provide his advice for free or to bear the responsibility in respect of such a significant sum of money.

46. In these circumstances, the tribunal agrees that a capped indemnity in respect of expert advice to inform any observations which can usefully be made on behalf of the leaseholders, once the anticipated further information is provided by the Applicant, is an appropriate condition to deal with that likely and potential prejudice to the tenants that remains to be addressed, as identified in [50] of *Aster*. That said, there is some force in Mr Allison's argument that the work duplicates that of the landlord in terms of the surveys. With this is mind, the tribunal considers that the provision for Fire Engineer costs should be stripped out and the indemnity reduced to a maximum of £20,000 plus VAT.

47. The tribunal also agrees that the Represented Respondents are entitled to their costs of the dispensation application, as "a reasonable price of indulgence" identified in all three authorities. Again, the tribunal agrees with Mr Allison that those costs should be reduced to take into account the Guideline Rates. The tribunal also considers that nothing should be payable by the Applicant in relation to the solicitor's costs for preparing and attending the hearing as counsel was instructed and therefore this is duplication. Allowing the same amount for the solicitors and counsel this reduces the costs payable by the Applicants to £16,500 plus VAT.

48. The remaining conditions as to information are set out above and intended to reflect a balance between provisions to deal with potential prejudice to the tenants and avoidance of an onerous regime for the landlord or one that may risk third party recovery. We consider that, with the balance we have struck in the various conditions, it is reasonable to dispense with all the consultation requirements in respect of both sets of works.

Application for an order under section 20C/paragraph 5A

49. Finally, the Represented Respondents made an application for an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the Applicant from charging any of its professional or legal fees arising in consequence of the application to them.

50. The Applicant resisted this application on the basis that they were entitled to their costs under the lease and no evidence of financial prejudice had been provided. Mr Bates for the Represented Respondents said it was impossible to imagine a case where it would be just and equitable for the landlord to charge the leaseholders for their statutory rights to be reduced. He also pointed to paragraph 73 of *Daejan* as an indication of the standard approach to be taken by the tribunal.

51. The tribunal agrees that in the circumstances of this case it is just and equitable for the Applicant to bear the costs of their application. In particular, the Applicant bought the freehold with full knowledge of the potential problems arising out of Grenfell and is likely to have gained some commercial benefit at that stage. Again, it is also seeking an indulgence from the tribunal and must expect to bear the costs of so doing.

Name: Judge Ruth Wayte **Date:** 27 June 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).